HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 733 of 2001

1. Prem Prakash Sharma
   S/o late Pt. Raja Ram Sharma
   R/o 14 Balbir Road, Dehradun
   Posted as Supt. Engineer, Irrigation
   District Gorakhpur
2. Smt. Sandhya Sharma
   W/o Sri P. P. Sharma
   R/o 14 Balbir Sharma Dalanwala
   District Dehradun
3. Ajai Sharma
   S/o late Shanti Kumar Sharma
   (nephew of the applicant No.1)
   R/o 14 Balbir Road
   P.S. Dalanwala, Dehradun
4. Sub-Inspector R. K. Singh
   Police Chauki Arraghar
   P.S. Dalanwala, Dehradun .....Applicants

Versus

1. State of Uttaranchal
2. Manjoor Ahmad Beg
   S/o Mustfa Beg
   R/o 297 Chukkuwala
   P.S. Kotwali
   District Dehradun .....Respondents

Hon'ble J.C.S. Rawat, J.

Heard Sri B. P. Nautiyal learned counsel for the applicants and Sri Nandan Arya leaned A.G.A.

2. The petition under section 482 Cr.P.C. has been filed for quashing the case No.Nil/1987 Manjoor Ahmad Beg Vs. P. P. Sharma & others pending in the court of Addl. Chief Judicial Magistrate, Dehradun under section 392 I.P.C.

3. The learned counsel for the applicants has only submitted that the compromise has been taken place between the parties. As such, the compromise may be taken on record and proceedings may be quashed. The

learned A.G.A. refuted the contention and contended that this Court is not competent to record the compromise. Section 320 Cr.P.C. specifically categorized the list of the compoundable offences and non-compoundable offences. The section involved in the present petition is not compoundable offence. Section 320(9) Cr.P.C. specifically provides that no offence shall be compounded except as provided by this Section. Perusal of Section 320 Cr.P.C. reveals that the Court has no power to decide the non-compoundable offence by way of a compromise. The Hon'ble Supreme Court has held in **Ram Lal & another Vs. State of J & K 1999(2) SCC p/213** that:-

> *"4. It is apparent that when the decision in Mahesh Chandra Vs. State of Rajasthan 1990(Supp.) SCC p681 was rendered, the attention of the learned Judge was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges, who rendered the decision in Suresh Babu drawn. Hence, those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compoundable at all. The offence under section 326 IPC is, admittedly, non-compoundable and hence, we cannot accede to the request of the learned counsel to permit the same to be compoundable."*

In view of the above, I am of the view that the petition is dismissed. However, the parties will appear in person or through their counsel before the court below and will adduce the evidence. If the court below after

appreciation of the evidence comes to the conclusion that the case under section 392 is not made for framing of the charge and further comes to the conclusion that the compoundable offence is made out, the parties may file the compromise before the court below.

The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 22.07.2005

LSR